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For The Northern Mariana Islands
By _____
(Deputy Clerk.)

Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA) CRIMINAL ACTION NO. 05-00027
)
Plaintiff)
) MEMORANDUM SUPPORTING
v.) PARTIAL DISMISSAL FOR
) MULTIPLICITY
ZHENG MING YAN)
) Date: May 11, 2006
Defendant) Time: 9:00 a.m.
_____)

I. COUNTS 2, 3, AND 4 ARE MULTIPLICIOUS

Generally, multiplicity is the charging of a single offense in more than one count.

Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180 (1982); *United States v. Taitano*, 2004 WL 2126853(D.N.Mar.I.,2004). Such an indictment seeks to impose multiple punishments for what is in essence one crime. *United States v. Liu*, 2000 WL 34226921 (D.N.Mar.I. 2000). The test for multiplicity is whether each count separately violated statutory provision "requires proof of an additional fact which the other does not." *Blockburger*, , 284 U.S. at 304, 52 S.Ct. at 182. *Taitano*, *supra*; *Liu*, *supra*.

Counts 2, 3 and 4 each charge a violation of 18 U.S.C. § 1591(a) which criminalizes a person knowingly:

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1 (1) in or affecting interstate or foreign commerce, or within the special maritime
2 and territorial jurisdiction of the United States, recruits, entices, harbors,
3 transports, provides, or obtains by any means a person; or

4 (2) benefits, financially or by receiving anything of value, from participation in a
5 venture which has engaged in an act described in violation of paragraph (1),

6 knowing that force, fraud, or coercion described in subsection (c)(2) will be
7 used to cause the person to engage in a commercial sex act,....

8 A person can violate § 1591(a) by two means. Section 1591(a)(1) is violated by recruiting,
9 enticing, harboring, transporting, providing, or obtaining by any means necessary a person knowing
10 that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act.
11 Section 1591(a)(2) is violated by benefitting, financially or by receiving anything of value from
12 participating in a venture which causes a person to engage in a commercial sex act by recruiting,
13 enticing, harboring, transporting, providing, or by any means. Pleading each of these theories in a
14 single count is proper and is not duplicitous. *United States v. UCO, Inc.*, 546 F.2d 833, 838 (9th
15 Cir. 1976)[generally, when a statute encompasses various modes of violation requiring different
16 elements of proof, the different means can be pled in a single count]. for because when a statute
17 provides for different means].

18 In this case, counts two, three, and four of the superseding indictment each charge a
19 violation of § 1591(a)(2). As noted above, § 1591(a)(2) criminalizes participation in a venture. A
20 “venture” is defined as “any group of two or more individuals associated in fact, whether or not a
21 legal entity.” 18 U.S.C. § 1591(c)(3). A reading of the superseding indictment reveals that counts
22 two, three, and four each plead the same venture. In other words, same venture is charged in three
23 different counts. The proof necessary to convict under § 1591(a)(2) is the same in counts two,
24 three, and four. Section 1591(a)(2) does not require that a defendant benefit from any specific
25 person. It only proscribes benefitting from the venture. There is only one venture and the statute
26
27
28

1 does not make each distinct or discrete benefit received a separate offense. This renders counts
2 two, three and four multiplicitious. *See e.g. United States v. Stewart*, 420 F.3d 1007, 1013 - 1015
3 (9th Cir. 2005).
4

5
6 **II. COUNTS SEVEN AND EIGHT ARE MULTIPLICIOUS**

7 Counts 7 and 8 each allege a violation of 18 U.S.C. § 2314. What the statute prohibits is (1) the
8 devising of a scheme or artifice to defraud or obtain money by false pretenses or representations
9 and (2) causing or inducing an intended victim to travel in interstate commerce with intent to
10 defraud that person of money or property having a value of \$5,000 or more. *United States v. Reina*,
11 446 F.2d 16, 17 (9th Cir. 1971). What the statute essentially prohibits is the scheme. Each victim of
12 the scheme does not constitute a separate offense. *See Reina*, 446 at 17[“No attack is made on the
13 sufficiency of the evidence to support the jury's conclusion that appellant engaged in a scheme to
14 defraud and, in the execution of that scheme, induced victims to travel in interstate commerce.”].
15

16 In this case, the indictment alleges one scheme to defraud in violation of § 2314. The
17 scheme in Count 7 is the same as the scheme in Count 8. That fact that Wei Qiuxiang traveled on a
18 different date does not result in a new offense. Indeed, the relevant portion of § 2314 applicable to
19 counts 7 and 8 is as follows:

20 [w]hoever, having devised or intending to devise any scheme or artifice to
21 defraud, or for obtaining money or property by means of false or fraudulent
22 pretenses, representations, or promises, transports or **causes to be transported,**
23 **or induces any person or persons to travel** in, or to be transported in interstate
24 or foreign commerce in the execution or concealment of a scheme or artifice to
defraud that person or those persons of money or property having a value of
\$5,000 or more (*emphasis added*).

25 The plain meaning of § 2314 shows that a single scheme can involve multiple persons. This
26 makes Counts 7 and 8 multiplicitious as both counts involve the same scheme.
27
28

CONCLUSION

Counts 2, 3, and 4 are multiplicitious. Two of the counts should be dismissed. Similarly, counts 7 and 8 are multiplicitious. One of the counts should be dismissed.

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